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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 THE BRANCH OF CITIBANK, N.A.
4 ESTABLISHED IN THE REPUBLIC OF
ARGENTINA,

5 Petitioner,

6 v.

21 CV 06125 (VM)
Telephone Conference

7 ALEJANDRO DE NEVARES,

8 Respondent.

9 -----x

New York, N.Y.
July 23, 2021
12:01 p.m.

10
11 Before:

12 HON. VICTOR MARRERO,

District Judge

13
14 APPEARANCES VIA TELECONFERENCE

15 PILLSBURY WINTHROP SHAW PITTMAN LLP

16 Attorneys for Petitioner

17 BY: ROBERT L. SILLS

RYAN ADELSPERGER

18 KUDMAN TRACHTEN ALOE POSNER, LLP

Attorneys for Respondent

19 BY: GARY TRACHTEN

20 DAVID N. SAPONARA
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(The Court and all parties appearing telephonically)

THE COURT: Good afternoon. This is Judge Victor Marrero. This is a proceeding in the matter of Citibank, Argentina v. Alejandro DeNevaras, docket number 21 CV 6125. Do we have a court reporter on the line?

THE REPORTER: Yes, your Honor. It's Rose. Good afternoon.

THE COURT: Thank you.

Counsel, please enter your appearance.

MR. SILLS: On behalf of petitioners, it's Robert Sills and Ryan Adelsperger on behalf of the Pillsbury firm.

MR. TRACHTEN: Good afternoon, your Honor. On behalf of the respondent, Gary Trachten and David Saponara of Kudman Trachten Aloe Posner.

THE COURT: All right. Thank you.

The Court scheduled this proceeding in response to requests by petitioner on a notice to show cause for a temporary restraining order and relief, requesting the Court to enjoin proceedings or potential litigation of matters in Argentina, and to compel the defendant to arbitrate the dispute that is at issue.

Let's first set some ground rules in terms of how much time we will address the matter on each side. Let me just indicate that I have read the documents that the parties have submitted, the complaint and the petition, in particular. I

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1 have not reviewed any or seen that the defendants have filed
2 any written response, but we will hear their presentation and
3 arguments at this proceeding.

4 I would suggest, given the Court's familiarity with
5 the underlying facts, that we allow each side initially ten
6 minutes apiece to present any material arguments that they may
7 wish to have the Court consider, and we will then assess
8 whether anything beyond that initial argument is necessary.

9 All right. Petitioner, Mr. Sills?

10 MR. SILLS: Thank you very much, your Honor, and I
11 should say since we see no papers from the respondents, nor
12 have we been informed by e-mail or otherwise of what position
13 they take, to some extent, and I apologize in advance, we may
14 be addressing arguments they haven't raised because we don't,
15 frankly, know what their position is because of the failure to
16 file papers in accordance with the order to show cause that
17 your Honor signed.

18 That being said, your Honor, this is a typical case of
19 a party litigating in a foreign forum in violation of an
20 agreement to arbitrate disputes in New York, and the feature
21 that I think makes this case seem complicated, although it
22 really isn't, is the fact that our client is the Buenos Aires,
23 the Argentine branch of Citibank, but it is a separate entity
24 for these purposes.

25 And as you can see from Mr. Pertine's declaration,

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1 which is attached to and part of our moving papers -- he's the
2 general counsel of the branch in Argentina -- it's subject to
3 separate regulation. It keeps its own books and records. It
4 has its own employees.

5 And most notably, in his declaration, the branch --
6 the parent, Citibank NA, the company that Mr. DeNevarres
7 actually sued, the New York bank, is not responsible as a
8 matter of Argentine law, for the debts of the branch.

9 And when Mr. DeNevarres, back before 2007, was working
10 for the branch in Argentina, he eventually resigned to take a
11 different position within the Citibank group of companies. And
12 when he did that, he signed an acknowledgment, which also
13 appears as an attachment to our papers, stating and
14 acknowledging that Citibank NA and Citibank Argentina were
15 different entities, and he gave a release in favor of Citibank
16 Argentina, which presumably explains why he made the tactical
17 decision not to sue Citibank Argentina in his Argentine lawsuit
18 but to sue Citibank NA.

19 But he did attempt to serve Citibank NA by serving
20 Citibank Argentina in Argentina, but the court there quashed
21 service and held that there were two entities and that Citibank
22 Argentina had not, in fact, been sued.

23 Now, in connection with taking on his new employment
24 in New York, for which he received a very substantial pay
25 increase, Mr. DeNevarres executed what's called an employee

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1 handbook receipt and also executed a Citigroup Principles of
2 Employment document, which appears as Exhibit 4 to Ms. Cores'
3 declaration. And both of those have broad arbitration clauses.
4 And the arbitration clause specifically extends not only to
5 Citigroup but to Citigroup subsidiaries and affiliates, which
6 obviously includes Citibank Argentina, the separate entity.

7 I should say, both not only, as a matter of Argentine
8 law but as a matter of New York law, bank branches and the
9 banks themselves are often considered to be separate juridical
10 entities. And, in fact, as your Honor will recall, in a case
11 you decided called *Martinez v. Republic of Cuba*, you
12 specifically stated, and it was key to the hearing, that under
13 Article 4A of New York UCC "a branch or separate office of a
14 bank is a separate bank for purposes of this article," and then
15 citing the decision of the New York Court of Appeals in
16 *Motorola Credit Corp.*, which stated that that separate entity
17 rule is a firmly established principle of New York law. And
18 it's noteworthy that that principle was applied in the context
19 of enforcement proceedings against banks.

20 So we have an employee of a separate organization in
21 Argentina, who agreed to arbitrate disputes with that entity,
22 that gave a release in favor of that entity that he elected not
23 to sue but to sue the New York entity, Citibank NA. Prevailed,
24 after 12 years in the Argentine courts, on a claim that
25 Argentine law somehow gave him a cause of action for his

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1 dismissal in 2007 in New York as part of a reduction in force
2 during the fiscal crisis.

3 But we don't challenge his right to attempt to collect
4 that judgment against Citibank NA following whatever procedures
5 are appropriate, presumably a claim under the Uniform Foreign
6 Country Money Judgments Recognition Act, which I believe is
7 Article 53 of the CPLR in New York.

8 What he can't do is bring a claim against Citibank,
9 the Citibank branch in Argentina because it's a separate entity
10 that he made the decision not to sue, didn't sue, acknowledged
11 was different.

12 And this would have, if he were able and not
13 restrained from pursuing that remedy, Citibank NA, as
14 Mr. Pertine observes, has its own books, has its own regulator,
15 reports to the Argentine banking regulatory authorities under
16 their scheme, and this would have an adverse financial impact
17 on Citibank Argentina in Argentina under the rules and
18 regulations that govern it.

19 Now, in discussions -- it won't surprise your Honor
20 that there have been efforts to resolve this case in Argentina.
21 Mr. DeNevaras has not disclaimed any attempt to pursue claims
22 against the bank in Argentina. And switching seats for the
23 moment with his Argentine lawyer, I'm sure that's a remedy he
24 will likely pursue, but one that he can't.

25 The harm of not restraining this proceeding to

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1 Citibank is apparent and real. The harm to Mr. DeNevarés of
2 what we had originally asked for, a brief restraining order, is
3 de minimus, if anything. Citibank is one of the most solvent
4 entities in the world. If he can enforce his claim against the
5 entity he chose to sue, he will get paid. Citibank has tens of
6 billions of dollars in assets, and although we think that this
7 judgment is unusual and large for the kind of claim that
8 Mr. DeNevarés said, that's not before the Court at this point
9 nor, for that matter, is his right to attempt to pursue a claim
10 against Citibank Argentina.

11 We're not asking the Court to rule that Citibank
12 Argentina is somehow immune from process or that the judgment
13 can't be collected down there. That's a question for the
14 arbitrators, and we have commenced an arbitration. And
15 Mr. DeNevarés is free to pursue that claim in the forum that he
16 voluntarily agreed to at the time he received a very
17 substantial increase in his compensation and moved to New York.

18 So both because of the very strong policy New York has
19 and that the United States has in favor of enforcing
20 international arbitration agreements, this agreement is subject
21 both to the Panama Convention and the New York Convention.

22 To the case law that's cited in our papers, and
23 starting with China Trade, extending through Judge Lynch's
24 decision in the Storm case, this is an ordinary case for the
25 Court to exercise its discretion and enjoin proceedings that

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1 are about to be brought in violation of an arbitration
2 agreement that requires that claims be pursued in a different
3 forum than the Argentine courts.

4 Now, in an e-mail yesterday, because we had received a
5 request for an extension from Mr. DeNevarres' Argentine
6 lawyers -- interestingly enough, in an English-language note
7 that stated that Mr. Arias, his lawyer there, didn't speak
8 English -- asking for an extension, and we said that we would
9 agree to an extension if he would agree to a restraint during
10 the period of time that it would take for the briefing,
11 argument and decision of our motion for a preliminary
12 injunction.

13 We got no response on that. We reached out when
14 Mr. Trachten appeared late yesterday, I believe at about 6:00,
15 and again offered to discuss this. That was rejected.
16 Mr. Trachten told us, although I'm not sure on what basis, that
17 the Argentine courts were closed for two weeks, putting to one
18 side that this may take more than two weeks to decide in an
19 orderly way, and it should be decided in an orderly way, on
20 papers, that I'm not in a position to say -- I'm not an
21 Argentine lawyer, and no one on the call is -- that there
22 aren't other enforcement mechanisms available to Mr. DeNevarres
23 in Argentina.

24 I certainly know if he were pursuing a claim in
25 New York and for some reason the courts were closed, he could

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1 proceed to attempt to enforce a judgment here. And my
2 understanding is that the same is true in Argentina. But
3 again, in the interest of orderly proceedings, I think we've
4 made a showing for preliminary injunction.

5 Mr. DeNevarres and his counsel have elected not to put
6 in papers. The case is ripe for decision, and we believe we've
7 made a more than adequate showing for preliminary injunction.
8 If your Honor is inclined to give them an opportunity to put in
9 papers, despite their default and despite not engaging with us
10 on an offer to agree on a reasonable briefing schedule, then I
11 think, at a minimum, there ought to be a temporary restraining
12 order put in place to maintain the status quo in Argentina
13 while the case is briefed and while your Honor is deciding it.

14 I believe I've now exhausted my time, Judge, but would
15 be happy to respond to any questions from my presentation.

16 THE COURT: All right. Thank you very much.

17 Let me turn to Mr. Trachten.

18 MR. TRACHTEN: Thank you, your Honor. We were just
19 retained yesterday. Mr. Arias received the papers by Federal
20 Express the day before. That's when we first started talking
21 to him. His English is very weak. His English facilities,
22 whenever I spoke to him, we needed a translator, and if we had
23 normal service under the Hague Convention, under rules of
24 Argentina, that papers would have had to have been translated
25 into Spanish. They were not.

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1 If need be, we would like some time to -- maybe a
2 couple of weeks, maybe we could do some briefing. I think
3 letter briefing would probably suffice. If we were to make
4 some motions, it would include, I guess, first and foremost,
5 dismissal for lack of capacity, forum non-convenience,
6 insufficiency of service, probably, and we have to look at some
7 of these, and also to stay the arbitration.

8 However, we are prepared today to outline the
9 arguments that we would put to paper, and we suggest, your
10 Honor, that based on the oral presentation today, that simply
11 by deconstructing the motion papers may, by itself, suffice to
12 demonstrate that based on those papers and maybe some inquiries
13 that your Honor might want to make of both counsel, that the
14 motion should be denied and the petition dismissed.

15 To begin with, the Court hardly needs to go beyond the
16 7.1 corporate disclosure statement and the description of the
17 parties in the petition and elsewhere to see the infirmity of
18 the application. The caption is the Branch and otherwise
19 described, as with a small B, branch, of Citibank NA
20 established in Republic of Argentina. And as much as the
21 petitioner tries to create the illusion that the branch is a
22 distinct legal entity, it is not. It is a branch. Citibank's
23 lawyers can try to mislead on that, but it is Citibank. It is
24 the judgment debtor and it is not a third party.

25 However, the petitioner, however you want to name it,

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1 has not pointed to any rule of law that makes the branch a
2 distinct corporation. The fact that Argentina, as do other
3 countries, impose certain licensing and other regulatory
4 requirements on branches of foreign banks does not change the
5 fact that the assets held by the branch are Citibank NA assets.

6 As District Judge Sotomayor in *Greenbaum v.*
7 *Handlesbanken*, 26 F.Supp. 2d 649 at 652 and 653: "However, the
8 law seems fairly well settled that the domestic branch of a
9 foreign bank is not a separate entity underneath either
10 New York or federal law. New York has long adhered to this
11 general rule that when considered in relationship to the parent
12 bank, branches are not independent agencies. They are, what
13 their name imports, merely branches. They are subject to the
14 supervision and control of the parent bank and are
15 instrumentalities whereby the parent carries on its business
16 and are established for its own particular purposes, and their
17 business conduct and policies are controlled by the parent
18 bank, and their property and assets belong to the parent bank,
19 though nominally held in the names of the particular branches."

20 Now, I'll acknowledge that this particular quote deals
21 with when we are talking about the domestic branch of a foreign
22 bank, but the law is no different the other way.

23 Now, Mr. Sills has brought to your attention the
24 Martinez case, which although I didn't realize it, apparently
25 you've had opportunity to write with reference to. But what's

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1 quite clear is that that's a special rule that's carved out for
2 garnishments, restraints and, et cetera, when we're dealing
3 with -- the bank is not a party to the judgment, where the bank
4 is not a judgment creditor, and when the so-called branch, as
5 if it was an entity, is not a party on that.

6 It deals, when there's a third-party adjustment and
7 it's a special rule, that you can't garnish against one branch
8 for an obligation that came out of another branch and has no
9 application here.

10 So what really is going on here? Citibank, a judgment
11 debtor to Mr. DeNevaras in the amount in excess of \$9 million
12 is stretching the truth and the law in an effort to erect road
13 blocks to his enforcement of his judgment. Let's examine some
14 things, let me give you some questions that I think we need to
15 address.

16 What is the dispute, if there is one, for which
17 arbitration is demanded? Who are the parties to the dispute?
18 Is this really just an effort to re-litigate that which
19 Citibank already lost in the Argentinian court? Why shouldn't
20 this case, this whole matter, be resolved in an Argentinian
21 court? Does the arbitration agreement extend to the dispute
22 that's before us that's been presented to the AAA? What
23 evidence has been presented of an imminent threat of a
24 violation of Citibank's rights? What evidence has been
25 presented of any imminent harm? What evidence are in these

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1 papers for the need of an injunction in aid of arbitration, in
2 particular? And what exactly does the proposed TRO and the
3 preliminary injunction purport to prohibit until when?

4 So let's start with, what is this dispute? The
5 judgment against Citibank was -- by the way, it was not a claim
6 against, as they point out, it was against Citibank NA. It was
7 not -- it was for a dismissal that occurs after, by the way,
8 the release that they referenced. A release wouldn't have
9 applied to it anyway. I don't know why they're making any
10 reference to the release. This was a later dismissal, and this
11 case was not about -- was particularly about a dismissal.

12 If you look at the caption of the case that's
13 referenced in the order to show cause, where they want the
14 injunction, the name of that case is DeNevarres, Alejandro, v.
15 Citibank NA, and then it says, *S/despido*. If you translate
16 *despido*, it means dismissal. This is a case about the
17 dismissal, the later dismissal proceedings. Citibank has lost
18 that case.

19 Now, is it an employment dispute, or is it a dispute
20 about whether DeNevarres is permitted to execute against the
21 Citibank assets that are held by its branch in Argentina, where
22 the case was litigated? And that matters because if it is not
23 an employment case, and even perhaps if it's related to
24 employment, it's certainly beyond the scope of the arbitration
25 agreement. And if it's not an employment case, there is no bar

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1 to an Argentinian court hearing a motion to compel arbitration
2 and compelling arbitration.

3 Your Honor, the reason this might not have gone to
4 arbitration in the first place, the dismissal case, is because
5 Argentina does have a rule not to enforce arbitration
6 agreements in employment disputes. However, Citibank could
7 have -- back in 2009, when this case was brought, it could have
8 come to this Court and sought an injunction against
9 Mr. DeNevarres to prohibit him from pursuing the case in the
10 Argentinian court, and it could have started a declaratory
11 arbitration, which it could have sought to compel him to go
12 through, but it didn't.

13 Citibank, instead, litigated this case through for
14 many years. It had some ups; it had some downs, and then in a
15 decision by the Appellate court there, it was found to owe
16 Mr. DeNevarres \$9 million.

17 Now, if it is an employment matter, then I don't know
18 why they chose to submit it to the International Center for
19 Dispute Resolution, which is where they've submitted it, but
20 that only had some significance, which I may get to later, I
21 don't want to take too much time.

22 Well, who are the parties? Well, there's no such
23 thing as a branch as an entity. There is -- what we know is
24 that there are certain special regulatory requirements. So the
25 parties really here are Citibank NA and Mr. DeNevarres. If you

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1 look at rule 17, Federal Rule 17, and you look at who has the
2 capacity to be sued, 17(b), an individual who is not acting as
3 a representative, a corporation under the law in which it was
4 organized for a corporation, or for all other parties by the
5 law of the state where the court is located. And I don't know,
6 you could ask Mr. Sills, what is its capacity to sue? I would
7 be interested in hearing the answer.

8 Now, this, in fact, is precisely a re-litigation of
9 what was before the court in Argentina. The court in Argentina
10 expressly dealt with all the facts that they brought to you. I
11 just received, a couple of hours ago, a translation of one of
12 the judge's decisions in the Appellate court decision, and it
13 dealt expressly with this idea, did he move, did he leave the
14 Argentinian entity and then go to Citibank, and back and forth.

15 And the court -- that court, which has to be given its
16 due, treated the two entities as the same and treated those --
17 I hereby resign; I hereby join here -- treated those -- chose
18 to treat those matters as form over substance. As a matter of
19 fact, I can quote, and we'll get this decision to you. This is
20 what the court says: Citibank Argentina and Citibank New York
21 were a single bank. That is what the court in Argentina has
22 ruled.

23 Now, it's interesting that they were quick to bring to
24 your attention a case having to do with service of process,
25 where a court, we think mistakenly, did not accept that the

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1 branch would be the proper agent to service the process for NA;
2 although, that really didn't have any consequence. It was a
3 harmless error. That, they brought to your attention, but the
4 actual decision in the Argentinian court, which was of
5 substance and which was the basis of the case, there, they hid
6 the ball. So that is what precisely is going on here.

7 Now, the arbitration -- and it seems to me that if we
8 have a judgment in Argentina, that the Argentinian court should
9 control whether and to what extent the executions there are
10 proper or are improper in terms of assets that are in
11 Argentina.

12 Now, let's take a really close look, because this is
13 of critical importance, at the arbitration agreement on which
14 they relied. And in its brief, the petitioner, on page 12 and
15 13 -- you can read along with me, if you like -- flat out
16 misrepresented the scope of the arbitration agreement. And
17 this is what they stated, they said: The arbitration agreement
18 unambiguously states that any disputes with Citigroup, which
19 expressly includes the petitioner here, arising of or related
20 or anyone to Citigroup or its affiliates, including claims
21 arising during or after DeNevarres' employment, must be resolved
22 through arbitration. That's what the brief says.

23 Notably, they did not quote from the arbitration
24 agreement. You don't see that. You have to go into the very,
25 very tiny print of an exhibit to an affidavit to find it. It

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1 then goes on to characterize the arbitration clause, of which I
2 said did not quote, as a classic broad clause. Let's take a
3 look at what it says. This is -- I don't have the exhibit
4 number here.

5 David, does somebody want to let me know where it
6 appears in the record?

7 MR. SAPONARA: It's Exhibit 1 to the petition.

8 MR. TRACHTEN: It's what?

9 MR. SAPONARA: Exhibit 1 to the petition.

10 MR. TRACHTEN: All right. This is what it said. So
11 the name of the document is Principles of Employment, and you
12 get down to the fourth bullet point, and here's what it says:
13 Fourth, you agree to follow our dispute resolution arbitration
14 procedure for resolving all disputes, based on legally
15 protected rights, statutory, contractual or common law rights,
16 that may arise between you and Citigroup, Inc., and et cetera,
17 et cetera, its affiliates, its directors and blah, blah, blah.

18 Then it goes on to describe -- this is the operative
19 part -- these are our procedures. Our procedures are divided
20 into two parts: First, an internal dispute resolution
21 procedure, which allows you to seek a review of any action
22 regarding your employment or termination of your employment,
23 which you think is wrong and violates your legal rights.
24 That's the first one.

25 Now, let's look at the second. This is the

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1 arbitration section. Second, in the unusual situation this
2 procedure does not resolve your dispute -- meaning the dispute
3 that you have about whether your rights were violated -- you
4 and the firm agree to submit the dispute, within the time
5 provided by the applicable statutes, to binding arbitration
6 before the NASD. And my client was a -- did have such a
7 license.

8 I don't think Citibank NA is a member of the NASD. I
9 thought they went through hoops to show why it shouldn't go
10 through the NASD. They could have just said we're not a
11 member. So that's it.

12 So the only thing that was agreed if you have an a
13 complaint about your employment, termination or the conditions
14 of your employment, that is what's agreed to be arbitrated.
15 There's nothing in here that can at all be stretched to say you
16 should arbitrate a dispute about what assets fall within the
17 right in the collection of a judgment. This is a dispute about
18 what assets are available in the collection of a judgment and,
19 therefore, there is nothing to arbitrate. This arbitration
20 agreement is not warranted at all.

21 Now, evidence, what is the evidence? Also, we're
22 looking at a preliminary injunction. There needs to be some
23 kind of action taken or threatened that requires something to
24 be stopped. What is the threat to violate the rights? None.
25 It's purely conclusionary. There's a judgment against

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1 Citibank. The rest is speculation.

2 There is no evidence concerning Mr. DeNevarres'
3 intentions or plans to execute, let alone to execute on assets
4 other than Citibank NA's assets, which it has the right to
5 execute on. And, of course, yes, we do claim that the assets
6 held by the branch are Citibank assets. Otherwise, how could
7 we reach them? If Citibank -- if it's not a subsidiary and
8 Citibank doesn't own its stock, we can't execute against its
9 stock. Citibank can't, by creating a branch, put its assets it
10 owns beyond what creditors can get at. So there's no threat
11 there.

12 What is the evidence of the irreparable harm? This
13 involves money. I suppose if we wrongfully -- if my client
14 wrongfully executes, there's a remedy in arbitration to get the
15 wrongful execution damages. It's about money.

16 Now, even the notion of in aid of arbitration, if
17 there is an agreement, if there is an agreement of binding
18 arbitration, you would go to arbitration. The only reason
19 there's an exception to go to court is in aid of arbitration
20 because, typically, arbitration does not afford a remedy for an
21 emergency situation.

22 But they filed with the ICDR, and if you take a look
23 at the ICDR's rules, the ICDR has a special rule that if you
24 have an emergency application, they will have a -- in one
25 business day, appoint a single arbitrator to immediately

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1 resolve your execution. So with that being the case, assuming
2 that they pick a proper forum which is what they selected, they
3 have a remedy in arbitration without having to go to court in
4 order to obtain a provisional remedy.

5 So let's take a look -- I think this is most
6 important. Let's take a look at --

7 THE COURT: Excuse me, Mr. Trachten.

8 MR. TRACHTEN: Yes.

9 THE COURT: I've given you quite a lot of latitude to
10 the initial amount of time that I indicated.

11 MR. TRACHTEN: I'm sorry.

12 THE COURT: That's because I recognize that you got
13 these papers just yesterday and were only recently retained,
14 but at this point, I will ask you to summarize.

15 MR. TRACHTEN: Okay. Your Honor, rather than
16 summarize, if I may, with your permission, just make this last
17 point to address what they're asking for in the relief, which
18 will just be a minute, a minute and a half, a minute.

19 THE COURT: All right.

20 MR. TRACHTEN: If you're looking at their enjoining,
21 aside from what they've said, what they want to enjoin is
22 that -- first, they want to enjoin DeNevarres bringing any
23 action relating to his employment at Citibank Argentina. I
24 don't know why. There is no such proceeding and there's none
25 existing, none threatened.

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1 And then it says: Any attempt to enforce any judgment
2 rendered by Citibank NA in that case against Citibank
3 Argentina. Well, I don't know what that means, especially
4 since we don't think of Citibank Argentina. So that's just a
5 vague -- very vague. So that would be need clarification even
6 if it were to be granted.

7 It says: Compelling DeNevarres to cease prosecution of
8 any such litigation. Well, they haven't showed you there is
9 any litigation which is being prosecuted, and compelling
10 DeNevarres to arbitrate any dispute the parties in the action
11 that's there. Well, I guess it shouldn't be any dispute. It
12 should be a dispute that would be covered, and this is not one
13 that's covered.

14 Thank you, your Honor, and I apologize for going
15 beyond my time. I actually was trying to go quickly and not
16 pay that much attention to the time.

17 THE COURT: Well, thank you very much. Mr. Trachten,
18 you made reference in your last argument to the fact or your
19 observation there is nothing on the record to suggest that your
20 client has brought or is about to bring or is contemplating
21 bringing litigation in Argentina related to this matter. And
22 you characterize the petitioner's arguments on that score as
23 pure speculation, but let me ask you pointedly. Is there an
24 intent on your client's part to pursue proceedings in Argentina
25 related to this dispute?

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1 MR. TRACHTEN: You know, I don't think there's any
2 intention -- I don't know what the procedures in Argentina are
3 for the execution of a judgment, and so I guess there is an
4 intention, when they're able to. I'm advised by local counsel
5 that until August 2nd, nothing can be done. And so, you know,
6 so I guess what they want to do is, when they can, the
7 intention is to execute on whatever Citibank NA assets they
8 find in Argentina, and I think it's up to there to determine
9 what's a Citibank entity.

10 THE COURT: Thank you. Now, again, Mr. Trachten, one
11 other question. Mr. Sills had in his arguments made
12 representations that, in relation to both the Argentine counsel
13 and yourself, they have offered to essentially refrain from
14 further action if you stipulate or agree to some form of
15 standstill order. What is your response to that?

16 MR. TRACHTEN: Your Honor, my response is, I hope that
17 we've demonstrated that there is not -- that there aren't
18 grounds here for a TRO, but if your Honor thinks there's enough
19 of an issue here that some kind of standstill should be in
20 place, we can consent.

21 I've been authorized to consent to some kind of
22 standstill, but it would have to be a complete standstill for
23 all parties, meaning that, in the meantime, neither Citibank
24 nor any of its affiliates or branches or anything would be able
25 to take any steps whatsoever in regard to its response to the

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1 fact that there's this judgment against them.

2 And we would want to make sure that any kind of
3 restraining order would be very explicit about precisely what
4 we're allowed to do or we're not allowed to do because the way
5 we read the restraining order that is -- we don't know what it
6 means to say can enforce a judgment against NA, which is not an
7 entity that is independent of the judgment debt.

8 THE COURT: All right. Thank you.

9 Mr. Sills, any response to the preceding arguments?

10 MR. SILLS: Your Honor, yes. I'll try and be as brief
11 as possible, and I don't see any point to be served by
12 responding to many of the arguments that were raised or hinted
13 at in the form of questions.

14 With respect to the last point raised, I don't,
15 frankly, understand what this oral application for a
16 counter-restraint is or would be. Citibank Argentina is
17 attempting to protect its interests and its right to have this
18 dispute arbitrated, not to have Mr. DeNevarres stripped of his
19 right to attempt to pursue his claim that the judgment should
20 be enforced against Citibank Argentina, but simply requiring
21 him to pursue it in the forum to which he agreed.

22 And with respect to that, it was an extensive argument
23 made by Mr. Trachten about what he says is the limited scope of
24 the arbitration clause. First, as your Honor is certainly
25 aware, under the ICDR rulings and the rules of every leading

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1 arbitration institute, that is a question for the arbitrators
2 who, under the rule, have the jurisdiction to determine their
3 own jurisdiction and what goes by the rubric of competence,
4 competence in arbitration law.

5 But, your Honor, that's one of the two arbitration
6 clauses that he agreed to that Mr. Trachten was reading.
7 There's a broader one in the employment -- although that one is
8 broad enough, there's a broader one in the employment
9 arbitration policy that he expressly acknowledged. It appears
10 on page 38, and it's an attachment to Ms. Cores' declaration.
11 And it says this: "The policy -- that is the employment
12 arbitration policy -- "makes arbitration the required and
13 exclusive forum for the resolution of all employment disputes
14 based on legally protected rights, statutory, contractual or
15 common law rights, that may arise between an employee or former
16 employee and Smith Barney, or its current and former parent,
17 subsidiaries and affiliates, and it's in their current and
18 former officers, directors, employees, or agents, including,
19 without limitation" -- and it lists a series of statutory
20 claims.

21 And says, "In any other federal, state or local
22 statute, regulation or common law doctrine regarding
23 employment, discrimination in employment, the terms and
24 conditions of employment, termination of employment" -- which
25 is precisely what's at issue here -- "breach of contract,

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1 defamation, retaliation, whistleblowing or any claims arising
2 under any Citigroup Inc. separation plan."

3 Now, given the rules that we're all familiar with
4 about how arbitration clauses are to be construed broadly, how
5 arbitration is a special favorite of the law as a result of the
6 Federal Arbitration Act, I don't think there's any serious
7 doubt that a claim to enforce a judgment arising out of his
8 2007 termination by Citibank NA, however characterized, doesn't
9 come within that clause. But that's not, with respect, an
10 issue for the Court; it's an issue for the arbitrators, and
11 that is precisely why Citibank Argentina has commenced that
12 arbitration.

13 With regard to the rather extensive argument made
14 about how Citibank Argentina and Citibank NA are one in the
15 same, we don't claim that they are separate for all purposes,
16 and we don't -- on the other hand, one cannot say that, in the
17 banking field, that a bank and its branches are one in the same
18 for all purposes, as your Honor's decision in Martinez makes
19 very clear. And here, Mr. DeNevores acknowledged that.

20 Attached to Ms. Cores' declaration is his resignation
21 letter, and it says this: "I, furthermore, understand and
22 accept that Citibank NA, New York branch, is a different
23 employer" -- and that's when he was about to take up his
24 employment here in New York -- "and, consequently, I will have
25 no right to claim from Citibank NA branch established in the

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1 Republic of Argentina any item or difference or indemnity that
2 may result as a consequence of or in relation to my labor
3 relationship with Citibank NA, New York branch, or the
4 termination thereof."

5 That is precisely what he is attempting to do now, and
6 I think we heard from Mr. Trachten that he wouldn't disclaim
7 that his client in Argentina, on or after August 2nd --
8 although I'm not entirely sure of the significance of that
9 date -- will attempt to do precisely what he said in that
10 agreement he wouldn't do, in exchange for which he received a
11 pay increase in six figures.

12 And the same thing happened when he attempted to serve
13 Citibank NA by serving Citibank Argentina. The judge presiding
14 in the labor court specifically said that he would quash
15 service because the service had been made on a, quote, legal
16 representative of Citibank NA. I'm reading from a translation,
17 obviously; the original decision is in Spanish. Buenos Aires
18 branch of the Argentine Republic, not a defendant in the case.

19 Presumably because of the agreement that he had signed
20 when he took the better job in New York, walking away from any
21 liability that he could claim against Citibank Argentina, he
22 elected to structure his lawsuit against Citibank NA and only
23 against Citibank NA.

24 He couldn't serve them. He had acknowledged they were
25 different when he took the job. It appears to have been a wise

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1 tactical decision because he now has this enormous judgment
2 against Citibank NA, which, as we say, he is free to attempt to
3 pursue. We're not seeking any relief with regard to his
4 attempt to go after Citibank NA in New York.

5 And one would think that for a nine or \$10 million
6 judgment, he can engage counsel and pursue that claim subject
7 to whatever defenses New York law makes available. What he
8 can't do is do precisely what he said he wouldn't do when he
9 took that job in New York, and when he structured his case in
10 Argentina to plead around that waiver he had given.

11 If he wants to pursue Citibank Argentina, he's free to
12 do so, but he's got to do it in the arbitral forum that he
13 agreed to, and that's the ordinary office of an antecedent
14 junction. They're granted routinely in cases like this, where
15 there's an effort to end-run an arbitration clause. The China
16 Trade case is directly applicable here. No harm will befall
17 him.

18 I believe there has been an agreement here that a
19 temporary restraining order can be entered, and it's very clear
20 what we're asking. We're asking that he be restrained from
21 taking any efforts to enforce the judgment he has against
22 Citibank NA against Citibank Argentina, and that's the relief
23 we seek. I believe that's the relief that's been consented to
24 now.

25 There's no possible harm to him of agreeing to that

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1 while this motion is considered. If we get the restraint, then
2 the temporary restraining order will have preserved the status
3 quo and prevented him from making mischief in Argentina, in
4 violation of Citibank Argentina's rights.

5 And if the motion were to be denied, although we
6 obviously submit that it's well founded and should be granted,
7 then all that would have happened would be a brief delay in the
8 execution of the judgment there.

9 With respect to the application that was just made, I
10 don't know what that means. We have come to this Court asking
11 for relief. Obviously, we can't be restrained from that.
12 There is a petition for discretionary review of the Argentine
13 judgment pending in Argentina, the rough equivalent of a
14 petition for certiorari here. And I don't see that there's any
15 conceivable basis for asking that that not be pursued.

16 And with respect to the rest of the application, other
17 than the idea that the best defense is a good offense, I'm not
18 entirely sure what's being asked for. In fact, I'm not sure at
19 all what's being asked for, but it seems to me we've reached a
20 point that there are serious issues here. There's a likelihood
21 of success on the merits. My client will be harmed, not least
22 by having to report -- you know, this will hit their books in
23 Argentina, where they are regulated and regulated closely by
24 the banking and fiscal authorities. And as I say, there's no
25 conceivable harm to Mr. DeNevarres.

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1 He's holding, at the moment, the judgment for almost
2 \$10 million against one of the largest corporations in the
3 world, which is fully and highly solvent. Unless your Honor
4 has any further questions, I think that concludes our
5 presentation.

6 THE COURT: All right. Thank you, Mr. Sills. You had
7 in your earlier remarks indicated that you had reached out to
8 the defendants and offered to work out a standstill agreement?

9 MR. SILLS: Yes, your Honor.

10 THE COURT: What would be the nature of the standstill
11 that you contemplate?

12 MR. SILLS: The standstill would be a temporary
13 restraining order. Well, assuming your Honor isn't prepared
14 today to decide the preliminary injunction application, that
15 pending the disposition of the motion for a preliminary
16 injunction, that Mr. DeNevaras would agree -- and I can
17 actually quote from -- if you bear with me one second -- what
18 we proposed initially to Mr. Arias.

19 And he was, in fact, in accordance with -- it is not
20 true that the papers were just served yesterday. The papers
21 were served in accordance with the order to show cause that
22 your Honor signed on Saturday. We know that they were received
23 because we received an e-mail from Mr. Arias, as I say, in
24 English saying that he didn't speak English.

25 But what we ask is a TRO in ordinary form that will

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1 enjoin Mr. DeNevaras, and anyone acting in concert with him,
2 from taking any steps in Argentina to collect or enforce the
3 judgment rendered in his favor by Chamber Eight of the National
4 Court of Labor Appeals, or otherwise to commence or prosecute
5 any claim, action or demand against Citibank Argentina, and
6 that's pending the hearing and decision on the motion for a
7 preliminary injunction that's the ordinary scope of a TRO here.

8 It will simply maintain the status quo, and we think
9 it's entirely appropriate here. And I wrote that to Mr. Arias
10 by e-mail I think an hour after he -- he contacted us shortly
11 after his client defaulted in either asking for an extension or
12 putting in papers, in accordance with your Honor's order of
13 Saturday. I wrote back to him a little less than an hour later
14 making that offer. I never heard back from him or anyone else
15 acting on his behalf until I got an e-mail yesterday at around
16 6:00 p.m. from Mr. Trachten stating that he had appeared.

17 I wrote back to him by e-mail about half an hour
18 later, reminding him that we had offered to enter into a
19 standstill and agree on a reasonable briefing schedule.
20 Mr. Trachten then wrote back rejecting that offer and stating
21 that he would appear today and present argument, and that's
22 where the matter stood when we started this argument at noon
23 today.

24 THE COURT: All right. Thank you very much. I
25 appreciate the parties' thorough airing of this issue at this

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1 hearing. I'm going to ask the parties to endeavor to see if
2 they can negotiate a standstill agreement that would address
3 the issues or concerns of both sides, and I will give you one
4 week to do that. If you do not, if you're unable to reach such
5 a standstill agreement within one week, I will then rule on the
6 TRO petition.

7 Mr. Trachten, is that clear and understood?

8 MR. TRACHTEN: Yes, that's fine, your Honor.

9 Mr. Sills had quite a bit to say there. Can I have about 30
10 seconds to respond to something? He refers to the handbook
11 agreement. If you'll notice the front page of the handbook
12 says: This is a handbook for Smith Barney employees only. My
13 client was never a Smith Barney employee, and even as read by
14 Mr. Sills, it referred to employment disputes. This is clearly
15 a dispute about how to -- you know, about what can happen in a
16 judgment. Citibank litigated. Did not go to enjoin suit,
17 litigated. It is bizarre to --

18 THE COURT: Mr. Trachten? Mr. Trachten?

19 MR. TRACHTEN: Yes, I'm sorry.

20 THE COURT: Let me stop you because you're going back
21 into the merits of the dispute. At this point, the only thing
22 that I've asked is whether you're prepared to sit down with
23 Mr. Sills for the next week and attempt to reach a standstill
24 agreement. And if you're not able to do so and Mr. Sills, on
25 Friday of next week, says that you did not reach an agreement,

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1 then I will then proceed to rule on the petition.

2 MR. TRACHTEN: That would be fine, your Honor, and I
3 would expect we should be able to figure out, actually,
4 probably in a matter of hours, rather than in a week --

5 THE COURT: If you're able to do it in a -- as soon as
6 you do it, in a matter of hours, then just communicate with me
7 and I'll take the next step, whatever that may be.

8 MR. TRACHTEN: Right. I'm concerned about a briefing
9 schedule, your Honor, because I am -- I will be out of the
10 country on a congressional delegation for much of August; so
11 that's -- I'm interested in accelerating, as best we can,
12 considering that we have to write papers. And you can see
13 we're writing against a lot of papers; so I'd like to try and
14 expedite that. Thank you, your Honor.

15 THE COURT: All right. Thank you.

16 Anything else, Mr. Sills?

17 MR. SILLS: Just a point of clarification, your Honor.
18 We'll endeavor in good faith to reach such an agreement with
19 Mr. Trachten. I think the notion that we can agree in an hour
20 or two might be a bit on the optimistic side.

21 Could we have an undertaking that pending our
22 negotiation, that they will not take any steps to try and
23 enforce this judgment against the branch in Argentina? And my
24 concern is that while we're negotiating it, that the
25 circumstances may change and the status quo may be disturbed in

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1 Argentina.

2 THE COURT: Well, implicit in what I understand the
3 standstill agreement here, is that neither party will take any
4 step which is going to essentially change the status.

5 MR. TRACHTEN: That's correct, your Honor. That's my
6 understanding, and I think that's also with respect to putting
7 a hold on anything going on in arbitration in the meantime.

8 THE COURT: All right. Sit down and see what you can
9 do in the next week, and then communicate with the Court.
10 Thank you.

11 MR. SILLS: And we'll -- thank you very much, your
12 Honor.

13 THE COURT: Thank you.

14 MR. TRACHTEN: Thank you, your Honor.

15 THE COURT: Have a good weekend.

16 MR. TRACHTEN: You, too.

17 (Adjourned)